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International Alliance of Theatrical Stage Employees (IATSE), Local No. 39, AFL-CIO (NTH Degree, Inc.) and James McGittigan. Case 15-CB-4873

March 25, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND BARTLETT

The General Counsel seeks summary judgment because the Respondent has withdrawn its answer to the complaint, effectively failing to answer the complaint's allegations, which therefore must be considered to be true. Upon a charge filed on May 24, 2001, the General Counsel issued the complaint on September 28, 2001, alleging that the Respondent has violated Section 8(b)(1)(A) and (b)(2) of the Act. On October 29, 2001, the Respondent filed an answer to the complaint. On December 21, 2001, however, the Respondent withdrew its answer.

On December 31, 2001, the General Counsel filed a Motion for Default Judgment with the Board. On January 4, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

Although the Respondent filed an answer to the complaint, the Respondent advised the Regional Director, by letter dated December 21, 2001, that it was withdrawing its answer. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.¹

Accordingly, we grant the General Counsel's Motion for Default Judgment.

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, NTH Degree, Inc., the Employer, a Delaware corporation, with a place of business in New Orleans, Louisiana, has been engaged as a general service contractor in the convention and trade show industry. During the 12-month period ending September 30, 2001, the Employer, in conducting its operations, has purchased and received at its New Orleans, Louisiana facility, goods valued in excess of \$50,000 directly from points outside the State of Louisiana.

We find that NTH Degree, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Employer and Respondent have maintained an agreement requiring that the Respondent be the exclusive source of referrals of employment with the Employer.

At all material times, various employers and the Respondent have maintained agreements requiring that the Respondent be the exclusive source of referrals of employment with the employers.

On about the following dates and continuing dates thereafter, the Respondent has failed and refused to refer employee James McGittigan to employment with the Employer and various other employers:

March (2001)	19–21 24 26–28 30–31	April (2001)	1 3 6–12 17–29
May (2001)	1 3–26 30	June (2001)	1–3 6–15 10–23 25–28 30
July (2001)	5 11–25 31		

The Respondent has engaged in the conduct described above because McGittigan has used sources of employment other than the Respondent's hiring hall.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act.

2. By the acts and conduct described above, the Respondent has also been attempting to cause and causing an employer to discriminate against an employee in violation of Section 8(a)(3), in violation of Section 8(b)(2) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has unlawfully failed and refused to refer James McGittigan for employment with the Employer and various other employers because he used sources of employment other than Respondent's hiring hall, we shall order it to refer McGittigan in a nondiscriminatory manner and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, International Alliance for Theatrical Stage Employees (IATSE), Local No. 39, AFL-CIO, New Orleans, Louisiana, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to refer employees to employment with NTH Degree, Inc. and other employers because the employees use sources of employment other than the Respondent's hiring hall.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Refer James McGittigan for employment with NTH Degree, Inc. and other employers in a nondiscriminatory manner.

(b) Make James McGittigan whole for any loss of earnings and other benefits suffered as a result of the unlawful refusal to refer him to NTH Degree, Inc. and

other employers since March 19, 2001, in the manner set forth in the remedy portion of this decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its union office and hiring hall in New Orleans, Louisiana, copies of the attached notice marked "Appendix".² Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its union office or hiring hall, it shall duplicate and mail, at its own expense, a copy of the notice to all current members and former members who may have been registered on the Respondent's referral list at any time since March 19, 2001.

(e) Sign and return to the Regional Director sufficient copies of the notice for posting, if willing, by NTH Degree, Inc. and other employers maintaining agreements requiring that the Respondent be the exclusive source of referrals of employment, at all places where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 25, 2002

Peter J. Hurtgen,

Chairman

² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

STAGE EMPLOYEES (IATSE) LOCAL NO. 39

Wilma B. Liebman, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain on your behalf
with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to refer employees to employment with NTH Degree, Inc. and other employers because they use sources of employment other than our hiring hall.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL refer James McGittigan for employment with NTH Degree, Inc. and other employers in a nondiscriminatory manner.

WE WILL make James McGittigan whole for any loss of earnings and other benefits suffered as a result of our unlawful refusal to refer him to NTH Degree, Inc. and other employers since March 19, 2001.

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES (IATSE), LOCAL NO. 39,
AFL-CIO